

STATE OF NEW YORK - DEPARTMENT OF STATE

DIVISION OF CODE ENFORCEMENT AND ADMINISTRATION

MINUTES - STATE FIRE PREVENTION AND BUILDING CODE COUNCIL

Minutes of Wednesday, December 7, 2011 meeting of the New York State Fire Prevention and Building Code Council held via videoconferencing at One Commerce Plaza, 99 Washington Avenue, Albany, New York, Conference Room 505 and 123 Williams Street, New York City, New York, Conference Room 19th floor commencing at 10:05 a.m. The following Council members, designees and staff were in attendance.

PRESENT:

Ronald Piester, Presiding
Nicholas Altieri
Stephen Brescia
Michael Cambridge
John Flanigan
Maria Guizzotti
Robert Hankin
Nancy Hernandez
Gary Higbee
John Lee
Paul Martin
Neal Smith
Thomas Vanderbeek

ALSO PRESENT:

Raymond J. Andrews
Michael Auerbach
Joseph Ball, Esquire
Catherine Karp
Miriam McGiver

Agenda Item 1 – Welcome

Ronald Piester called the meeting to order and welcomed everyone. Ron noted that there was potential that he might have to excuse himself during the meeting and that Neal Smith had agreed to preside as temporary chair if necessary. Ron asked if there were any objections and seeing no objections this potential action was accepted.

Ron called for a roll call attendance. Ray Andrews took a roll call and noted that a quorum was present.

Agenda Item 2 - Minutes of the September 8, 2011 Meeting

Motion by Stephen Brescia to approve the minutes of the September 8, 2011 meeting, seconded by John Flanigan, approved unanimously.

Agenda Item 3 – Public Comment Period

Ray noted that there were three scheduled public speakers Ben Roy, Jeff Sargent and Gil Moniz who were present to address the council regarding adoption of the National Electric Code, NFPA-70 and the consensus rule. Ray Andrews suggested that the council have the speakers address the Council as each agenda item was presented. Ray further noted that Philip Giltner and staff from New York State Department of Agriculture & Markets would be at the meeting regarding an appendix item and they also would speak when their agenda item was presented. Ray confirmed with the Council that there were no objections to this approach.

Agenda Item 4 - Code Clarifications

Ray Andrews provided an overview and noted that issues including typographical errors and glitches in the printing of the codes which were intended to be put on the Internet web site as clarifications.

Robert Hankin asked whether these were reflected within the published copies. Ray Andrews explained that they were not and also that errata sheets were not published. Ray noted that changes are reflected in the New York Codes Rules and Regulations (NYCRR) documents which, as emphasized in training, is the appropriate reference and that they would be posted on the Internet site in a very clear manner. Robert Hankin requested that the International Code Council (ICC) in future publications include a notice regarding clarifications and Ray indicated he would approach ICC about this.

Agenda Item 5 - Code Change Adoption:

Ron Piester noted that there were four (4) specific items to address and each would be done separately. The first two were consensus changes to the Uniform Fire Prevention and Building Code. Ray Andrews gave an overview and explained that consensus changes are those for which there should not be issues about and therefore can be addressed through an expedited process.

The first was the National Electrical Code, NFPA 70 document and what is required in 2008 and 2011 is bonding and grounding of hot tubs and spas. The problem is it is impractical or impossible to do for existing installations. Therefore NFPA has issued an amendment. The second was the table regarding lintels in masonry construction which was in the last printing and was omitted by the publisher. The third was swimming pool latches. The fourth was Agricultural Commerce Building Appendix.

Ron started with the bonding and grounding item and suggested that the reason to address was for the council to act upon and give “conceptual approval” to proceed with the rulemaking.

Motion by John Flanigan that the code council give conceptual approval to proceed with the rulemaking regarding bonding requirements for spas and hot tubs and to submit those to the Division of Budget and the Governor’s office for approval and return, seconded by Stephen Brescia. Motion passed unanimously.

Motion by John Flanigan that the code council give conceptual approval to proceed with the rulemaking regarding lintels and addition of Table R703 and to submit those to the Division of Budget and the Governor’s office for approval and return, seconded by Nicholas Altieri. Motion passed unanimously.

Ray Andrews provided information about the next item, NFPA 70 - National Electric Code (NEC) 2011. Ray noted that an overview was presented at last two meetings and discussed but not acted upon. There were three individuals present to present. First was Ben Roy who spoke in favor of the adoption and noted he was willing to respond to any concerns there might be. Second was Jeff Sargent who was prepared to respond to technical questions and last was Gil Moniz who urged the council to move forward and was also there to offer any assistance or respond to questions.

Ray Andrews provided an overview. He noted this was to update the code with the latest NEC and that Miriam McGiver had put together additional information re changes and cost for the council.

Robert Hankin asked about the Dec 7, 2011 material re ground fault circuit interruption (GFCI) and this was clarified by Jeff Sargent as to location. Robert Hankin also asked about the definition of a foyer. It was explained that as per the code the standard definition NFPA uses would be as defined within Webster's 7th edition and added that it would be a foyer separate from other spaces.

Robert Hankin brought up other issues including tamper resistance receptacles as previously discussed. His concern was the practical usability of these and the unintended consequences for others. All of his comments were noted and responded to based upon their technical aspects and procedures.

Neal Smith noted that it clear public policy to reduce the energy use of the built environment and he made motion that the code council give conceptual approval to proceed with the rulemaking regarding updating of the code with the most recent NEC 2011 edition and to submit those to the Division of Budget and the Governor's office for approval and return, seconded by John Flanigan.

Robert Hankin noted that he did not feel the State Administrative Procedures Act (SAPA) documents were accurate and therefore was against the motion

Motion by Neal Smith that the code council give conceptual approval to proceed with the rulemaking regarding the adoption of NEC 2011 edition and to submit those to the Division of Budget and the Governor's office for approval and return, seconded by John Flanigan Altieri. Motion passed 12 to 1.

Ray Andrews noted that the next item was the location of latches in swimming pool enclosures and inadvertent discrepancy between codes and the Executive Law.

Motion by John Flanigan that the code council give conceptual approval to proceed with the rulemaking regarding swimming pool latches and the language therein and to submit those to the Division of Budget and the Governor's office for approval and return, seconded by Nicholas Altieri. Motion passed unanimously.

Ray Andrews noted that the next item was concerning the Agricultural Commerce Building Appendix and the issue of other temporary use, such as business and selling products. He noted that all buildings as per the code have an occupancy classification. He also noted that historically there have been 'exceptions' in the sense that occasionally they had been used for other uses, including assembly, mercantile, etc. Therefore since this concern had been raised and it is becoming more prevalent it was decided this should

be addressed. Ray noted the intent was to acquaint the Council with the issue and to have staff from Agriculture and Markets provide an overview and respond to comments.

Page 3 of 4

Philip Glitner provided information about his experience and “sugar shacks” and the problem that producers were having with code enforcement officials and the impact of those problems.

Robert Somers also provided information about the impact that the current codes and occupancy requirements have on his constituents. He noted that the Legislature amended the law to include “agritainment” and tourism

Whitney Russel provided additional information about the Department of State’s involvement with this and similar issues. He noted that from his experience there was a need to address these issues on a more general basis regarding occupancies, processing, employees, etc. While also recognizing that there are basic safety issues that need to be considered.

Members of the Council posed questions including why limited to agricultural farm operations, coordination with other state agencies, definition of temporary, exits, standby personnel, state fairgrounds, code enforcement, variances, occupant load, inspections, etc. Ron Piester acknowledged that further investigation would be appropriate and that all concerns would be addressed and brought back to the Council for action.

John Lee noted that there were many situations where there was a need to measure or validate the safety of a building that was going to be used contrary to its original intended use. He noted that New York City did temporary approvals.

Ron noted this was intended to be broader in application than a specific use, occupancy, etc. He noted that all of the topics, comments and discussion would be considered and continued with interested parties.

Agenda Item Number 6 Next Uniform Code and Energy Code Adoption Update

As per Ron Piester’s request, Raymond Andrews provided an overview as to status of code updates. Ray noted that previously the Council had agreed to moving forward and to start the process. He noted that executive approval had been obtained and aspects such as establishing technical subcommittees, chairs, and process have progressed.

Agenda Item Number 7. Future Meetings

Ray Andrews noted that a schedule for 2012 had been distributed and that provisions for video teleconferencing had been established.

Agenda Item Number 8 Other Business

Ben Roy made a statement about his upcoming retirement and thanked the Council for the opportunity and privilege of working with the Council.

Ron Piester thanked Ben Roy for his service to the Council and the state.

John Flanigan made motion to adjourn, seconded by Nicholas Altieri and approved unanimously

Page 4 of 4

Proposed